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OFFICE OF PETITIONS

In re Application of :
T. Mukhopadhyay et al :
Application No. 09/997,774 : DECISION ON PETITION
Filed: November 30, 2001 :
Attorney Docket No. :
7416/78598-PPA 6 :

This is a decision on the petition under 37 CFR 1.137(b), filed June 13, 2007 to revive the above-identified application. In view of the facts of this case, the petition is being treated as a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment.

The petition treated under 37 CFR 1.181(a) is GRANTED.

A Notice of Abandonment was mailed on May 31, 2007 stating this application is abandoned since "[t]he two-month suspension period has ended and [the] RCE is improper since no submission under 37 CFR 1.114 has been filed."

A review of the file record discloses that a final Office action was mailed on May 17, 2006, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before August 17, 2006, or on or before November 17, 2006 with the appropriate extension of time fee. On August 17, 2006, petitioner submitted an amendment, which was deemed by the Advisory Action of September 28, 2006 to not place the application in condition for allowance. Thereafter, on November 17, 2006, a request for continued examination (RCE) under 37 CFR 1.114, was filed, along with a request to suspend for two months and a three (3) month extension of time fee of \$1,020. In a communication mailed on May 21, 2007, the examiner granted the request to suspend under 37 CFR 1.103 and indicated that applicant is required to notify the examiner and request

continuance of prosecution or a further suspension, citing MPEP Section 709. A Notice of Abandonment was mailed on May 21, 2007 holding this application abandoned for the reasons stated above.

MPEP 706.07(h)(II), under submission requirement, states that the submission in an RCE may be "a previously filed amendment after final (whether or not entered) * * *. Therefore, a submission was present at the time of filing the RCE on November 17, 2006; i.e., the amendment filed on August 17, 2006 in response to the final Office action of May 17, 2006. It should be noted here that an examiner cannot grant a request to suspend where the submission requirement has not been met under 37 CFR 1.114. As the request to suspend was granted, it was recognized that a proper submission under 37 CFR 1.114 had been submitted. Accordingly, the statement in the Notice of Abandonment that there was no submission as required by 37 CFR 1.114 was improper.

Further, an application does not go abandoned merely because an applicant fails to notify the Office to either request continuance of prosecution or a further suspension. As noted in MPEP 709, notification of the approval of the suspension will be mailed to the applicant, which acts to suspend further action by the examiner. Once the suspension period has expired, the application will be placed on the examiner's docket for further prosecution. An applicant may at any time during suspension submit a letter requesting examination but does not have to request the Office to act on his case after a suspension has expired. Therefore, this application did not go abandoned for failure of the applicant to notify the Office to either continue prosecution or request a further suspension.

For the reasons stated above, the Notice of Abandonment mailed on May 31, 2007 is vacated and the holding of abandonment withdrawn.

In view of the favourable treatment of this petition under the provisions of 37 CFR 1.181(a), the \$1,500 fee submitted for the petition to revive is unnecessary and will be refunded to petitioner's deposit account in due course.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. Inquiries concerning either the

status or examination of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 2616 for processing the RCE filed on November 17, 2006 and for taking appropriate action in the normal course of business on the submission under 37 CFR 1.114.

A handwritten signature in cursive script, appearing to read "Frances Hicks", is written over the printed name.

Frances Hicks
Petitions Examiner
Office of Petitions